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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 4TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR.JUSTICE G.PATRI BASAVANA GOUD

WRIT PETITION NUMBER 12055 OF 1990

Between:

Sri B.Aboobakar son of Babu Kunti  
aged about 32 years, Conductor,  
GC No.690, Mangalore Depot,  
Karnataka State Road Transport  
Corporation, Mangalore,  
Dakshina Kannada District, and  
residing at Karaya village & Post  
Belthangadi Tq., Dakshina Kannada -Petitioner

(By Sri K. Subbarao, Advocate)

And:

1. The Karnataka State Road Transport  
corporation, represented by the  
Managing Director, Central Offices,  
Kengal Hanumanthiah Road,  
Bangalore 560 027

2. The Regional Manager  
Karnataka State Road Transport  
Corporation, Mysore Region,  
Bannimantap Road, Mysore.

3. The Divisional Contruller  
Karnataka State Road Transport  
Corporation, Mangalore Division  
Mangalore, Dakshina Kannada -Respondents

(By Sri L. Govindaraj, Adv. for R-1 and R-2  
R-3 served)

This writ petition is filed under Article  
226 of the Constitution seeking to quash the order  
dated 25-5-1988 (Annexure-B) in No.KST/MND/DFL/  
319/88/703/88 passed by the third respondent; and  
the order dated 31-1-1990 at Annexure G in No.  
KST:MYS:RM:DFL:D3:1347:89-90, and to grant consequentia  
benefits.

This writ petition coming on for hearing this day  
the Court made the following:

ORDER

O R D E R

Petitioner is working as conductor in the respondents KSRTC. On proof of the charge that on 6-2-1988, when his bus plying from Mangalore to Bombay was checked, it was found that he had failed to issue tickets to two passengers, The Disciplinary Authority, namely the Divisional Controller, imposed a punishment of withholding of the ensuing increment for a period of one year without cumulative effect. While the petitioner workman left the matter at that, the revisional authority suo motu took up the matter and directed an enquiry for the first time to be conducted into the charge, and, for that purpose, appointed the Traffic Manager of Mangalore Division as the Enquiring Authority. The Enquiring Authority held the enquiry for the first time and submitted a report, upon which the revisional authority, purporting to act under Regulation 35 of the Karnataka State Road Transport Corporation Servants (Conduct and Discipline) Regulations, 1971 ('Regulations' for short), modified the above said punishment imposed by the disciplinary authority and, in its place, imposed the penalty of reducing the pay of the petitioner by two incremental stages with cumulative effect operating for his entire

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service, which is now called in question in this writ petition under Article 226 of the Constitution.

2. Ms. Renuka, learned counsel for the respondents KSRTC, urges that, by virtue of Regulation 19(2) read with Note-4 to the Schedule to the Regulations, even the revisional authority can act as disciplinary authority and as such, the revisional authority's imposition of the said penalty cannot be successfully challenged. Ms. Suma, learned counsel for the petitioner, pointed out that the said regulation 19(2) read with Note-4 to the Schedule, <sup>when it</sup> permits even the ~~revisional manager~~ Regional Manager to act as disciplinary authority, it pre-supposes that, for the misconduct, where the lower functionary i.e. Divisional Controller has not yet initiated any action as disciplinary authority, then, the Regional Manager can act as disciplinary authority.

In respect of a particular misconduct of an official, only one authority can act as disciplinary authority. Normally, in the present case, it is the Divisional Controller who is to act as disciplinary authority. By virtue of Regulation 19(2) read with Note-4 to the Schedule to the Regulations,

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the Regional Manager also can act as disciplinary authority. But that is only if the Divisional Controller has not exercised his power as disciplinary authority for a particular misconduct. Where the Divisional Controller has already acted as disciplinary authority and has imposed certain punishment, it is not open to the Regional Manager to once again act as disciplinary authority and punish the petitioner for the same misconduct. It will lead to an anomalous situation if ~~however~~ *every* ~~the~~ authority who is permitted to act as disciplinary authority, goes on initiating proceedings as disciplinary authority and punishes the officials for the same misconduct. It may even lead to an official being punished for the same misconduct more than once by more than one disciplinary authority.

3. Ms. Renuka, learned counsel for the respondent KSRTC, next urges that, under Regulation 35(1)(iii)(c) of the Regulations, the Regional Manager, while sitting as a revisional authority, can remit the case either to the authority which made the original order i.e. the Divisional Controller, or to any other

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authority, in the instant case to the Traffic Manager, <sup>directing</sup> such authority to make enquiry as has been done by the Regional Manager in this case, wherein he has directed the Traffic Manager of Mangalore Division to hold an enquiry. It is true, the revisional authority could so order an enquiry. But what is contemplated therein is further enquiry, not a fresh enquiry. In fact, the said Regulation 35(1)(iii)(c) refers to the enquiry to be so ordered as further enquiry and not a fresh enquiry. It is to be understood in this way. There is an enquiry already held on the basis of which the disciplinary authority has imposed certain punishment. The Revisional Authority may feel that a further enquiry may be needed. It is in that event that the matter can be remitted under the above said clause, either to the very authority which had held the earlier enquiry, or to any other authority, solely for the purpose of conducting further enquiry. What has been done now by the revisional authority is <sup>directing</sup> altogether a fresh enquiry. The enquiry ordered by the revisional authority and held in pursuance of the <sup>said</sup> order by the Traffic Manager, Mangalore Division, was not a further enquiry i.e. in continuation of what had been held earlier, but totally a

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fresh enquiry because no enquiry had earlier been held, the initial punishment by the Divisional Controller/Disciplinary Authority having been imposed without enquiry because it was a minor punishment. In such circumstances, the revisional authority could not have ordered for fresh enquiry for the first time under Regulation 35(1)(iii)(c). The impugned punishment imposed by the revisional authority based upon such an enquiry report, therefore, cannot be legally sustained.

4. Petition allowed. The order of the Regional Manager (Revisional Authority) dated 31-1-1990 at Annexure-G is quashed, and the order of the disciplinary authority (Divisional Controller) dated 25-5-1988 at Annexure-B is held to hold the field.



Sd/-  
JUDGE